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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/586,874

07/21/2006

Roberto Trebbi

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EXAMINER

DURAND, PAUL R

ART UNIT

PAPER NUMBER

3721

NOTIFICATION DATE

DELIVERY MODE

10/02/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/586,874 | Applicant(s) TREBBI ET AL. | |
| | Examiner PAUL R. DURAND | Art Unit 3721 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/21/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 5-7, 12, 14-16 and 20-25 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Although the claims are in improper format, claims 1-18 and 20-25 have been rejected in lieu of the cited prior art and international search report filed 7/21/2006.

Additionally, the claim preamble of claims 1 and 17 are rather lengthy and recite elements of the invention itself. Accordingly, the preamble has been treated as containing claim limitations as the preamble limits the structure of the claimed invention. See MPEP § 2111.02(I).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7-9, 11, 14-18 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moser et al. (US 4,964,262) in view of Marchesini (US 4,991,377).

In claims 1, 7, 17, 18 and 21, Moser discloses the invention as claimed including a capsule filling machine for the production of sealed capsules with a lid "b" and a body

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“a” containing pharmaceutical material, feeding capsule bodies at station 1, filling the bodies at dosing stations 4, 5 and 6, closing the bodies at stations 9 and 10 so that the annular ends overlap (see figures 1, 2 and col. 1, line 54 – col. 2, line 25).

What Moser does not disclose is the use of an operating station to apply a sealant substance onto the vicinity of the ends of the body and lid. However, Marchesini, teaches that it is old and well known in the art of capsule filling to provide a station 4, utilizing pressurized fluids “F”, which are expelled onto a capsule body and in the vicinity of ends 1a and 2a, while the capsule is rotating for the purpose of providing a leak proof medicated capsule (see figures 1-3 and col. 3, line 17 – col. 4, line 59).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Moser with the sealing means as taught by Marchesini for the purpose of sealing a capsule.

In claim 2, Moser discloses the invention as claimed including handling turret 20 (see figure 1).

In claims 3-5, Moser discloses the invention as claimed including retaining and handling means in the form of bushes (generally 21 and 22) for keeping the lids and bodies separate and positioned radially on turret 20 (see figure 2).

In claims 8, 11 and 20, the modified invention of Moser, through Marchesini teaches that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Moser with a sealing nozzle (generally 4), located at an angle (in this instance 90 degrees) with respect to the

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longitudinal axis of the lid for the purpose of applying a sealing agent onto a capsule while the capsule is being rotated (see Marchesini, figure 1).

In claim 9, Moser discloses the invention as claimed including hollow pin portions (i.e. the hollow portions are cylindrical and elongated in shape) 43, and means (in the form of cam rollers 55-58, which move to closes the capsules (see figure 1).

In claims 14-16 and 22-24, the modified invention of Moser, through Marchesini teaches that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Moser with a sealing nozzle (generally 4), with the ability to spray any gas or any gas mixture or any suitable fluid mixture for the purpose of sealing a capsule which would include water, ethanol, a cellulose or gelatin based substance (see Marchesini, col. 3, lines 31-36).

4. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moser and Marchesini in view of Goutard et al. (US 4,403,461).

The modified invention of Moser discloses the invention as claimed as applied to claim 1 above, including rotating the capsule while sealant is applied. What the modified invention of Moser does not disclose is the use of a vacuum to retain the capsule. However Goutard teaches that it is old and well known in the art of sealing to provide a hollow pin portion 27, which utilizes vacuum from line 24 for the purpose of retaining a capsule half in position prior to being filled and sealed (see figures 1, 2, 5 and col. 5, line 64 – col. 5, line 58).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Moser with

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the vacuum means as taught by Goutard for the purpose of retaining a capsule half in position prior to being filled and sealed.

5. Claims 12, 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moser and Marchesini in view of Wittwer (US 4,656,066).

The modified invention of Moser discloses the invention as claimed as applied to claim 1 above except for the use of a dryer to dry the capsules after sealing. However, Wittwer teaches that it is old and well known in the art to provide a drying conveyor 32, which transport sealed capsules 36 to a drying chamber 41 for the purpose of removing excess liquid prior to packaging (see figure 4 and col. 9, line 56-66).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Moser with the drying means as taught by Wittwer for the purpose of removing excess liquid from a capsule surface prior to packaging.

Allowable Subject Matter

6. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. DURAND whose telephone number is (571)272-4459. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL R. DURAND/
Primary Examiner, Art Unit 3721
October 1, 2008